



**Legislative Bulletin.....July 14, 2005**

**Contents:**

**H.R. 6** — Capps Motion to Instruct Conferees on the Energy Policy Act of 2005

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**Capps Motion to Instruct Conferees on the Energy Policy Act of 2005  
(H.R. 6)**

**Order of Business:** The motion was considered on July 13, 2005, as the House motioned to go to Conference on H.R. 6, and the roll call that was requested was postponed until today, July 14<sup>th</sup>.

**Note:** Under House rules that allow an amendment to strike an “unfunded mandate,” Rep. Capps offered an amendment on April 20, 2005, to H.R. 6 that read:

“In title XV, in section 1502, strike ``, or methy tertiary butyl ether (hereinafter in this section referred to as `MTBE')” and strike ``or MTBE” in each place it appears.”

The sponsor, quoting the CBO score, contended that the provision was an unfunded mandate, because the provision would limit state and local communities’ “existing rights to seek compensation under current law,” thus they would have to pay for MTBE cleanup. **The amendment, which was opposed by the Commerce Committee Chairman, was defeated on April 21, 2005, 213-219**

<http://clerk.house.gov/evs/2005/roll129.xml>

**Summary:** The motion to instruct conferees reads:

“Mrs. Capps moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 6 (An Act to ensure jobs for our future with secure, affordable, and reliable energy) be instructed not to agree to the inclusion of any provisions in the conference report modifying the liability with respect to methyl tertiary butyl ether (MTBE).”

This amendment presumably applies again to Section 1502 of the House passed bill which states:

**SEC. 1502. FUELS SAFE HARBOR.**

(a) In General- Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act, or methyl tertiary butyl ether (hereafter in this section referred to as `MTBE'), used or intended to be used

as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed a defective product by virtue of the fact that it is, or contains, such a renewable fuel or MTBE, if it does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the `Administrator') under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act. If the safe harbor provided by this section does not apply, the existence of a claim of defective product shall be determined under otherwise applicable law. Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events, public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

(b) Effective Date- This section shall be effective as of September 5, 2003, and shall apply with respect to all claims filed on or after that date.

This provision prevents fuels containing methyl tertiary butyl ether (MTBE) or other renewable fuels from being deemed defective merely because they contain MTBE. It does not waive liability for actual environmental violations.

H.R. 6, as it passed the House of Representatives, included three other provisions related to MTBE:

- **MTBE Conversion:** Authorizes \$2.0 billion over fiscal years 2005 through 2012 for grants to merchant producers of MTBE in the U.S. to assist the producers in converting production facilities to the production of iso-octane and alkylates.
- **MTBE Prohibition:** Prohibits the use of MTBE in motor vehicle fuel in any state beginning in 2015, unless a state informs the federal government that it is allowing the use of MTBE within its borders.
- **MTBE Contamination:** Authorizes expenditures from the Leaking Underground Storage Trust Fund for the EPA to undertake actions related to MTBE contamination resulting from underground storage tanks. Requires the promulgation of new regulations governing the training of people who daily operate and manage underground storage tanks.

**Additional Information:** According to the sponsor, the underlying bill “includes a provision granting MTBE manufacturers a waiver from liability for the damage their products have caused to groundwater supplies throughout this country.”

The sponsor states that the EPA has concluded that MTBE is a “likely” human carcinogen. Chairman Barton stated on the House floor that this study is a non-peer reviewed, draft study that was leaked from the EPA. He stated on the floor, “Well, I drink a lot of Diet Dr. Pepper. And my guess is if I were to drink ten gallons of Diet Dr. Pepper everyday for the rest of my life, I might develop cancer because of that. I do not think that MTBE, under the standard that is in current law, is a carcinogen, and all the studies that I have seen that have tried to prove it have come back just the opposite. So to hang our hat now on a draft study that has not been peer reviewed and has been leaked by the EPA, to me, is pretty weak soup indeed.”

According to the Commerce Committee chairman, under the Clean Air Act Amendments of 1991, Congress did not mandate MTBE, but “did mandate that you had to put an oxygenate requirement of 2 percent by weight. At that time, there were two ways to do it: One was ethanol and the other was MTBE. So we told the industry, if you are in a nonattainment area, you have to put one of two things, MTBE or ethanol, in your gasoline during certain parts of the year so that you get better combustion in the engine so that you get cleaner air quality. They found out that those communities who used the MTBE, it was much more cost effective. It cost less money; and two, it cleaned the air better, about 40 percent better than ethanol, 40 percent. But, as has been pointed out, if you store it in a tank that leaks, it may leak. And when the gasoline leaks, the MTBE as part of the gasoline leaks and the MTBE does get into the water table and that does cause an odor.”

MTBE contamination, the sponsor reports, has been found in over 2,300 water systems serving 36 States, with cleanup costs in the range of \$25 billion to \$33 billion and could be as high as \$85 billion or more. The Commerce Committee chairman stated in his floor remarks that, “when they talk about \$85 billion or \$30 billion or whatever the number is, most of that money is trial lawyer contingency fees.”

The Commerce Committee Chairman stated in objecting to this motion:

“What [Rep. Capps] does not say because the reports that she studies do not tell her is what the level is. Now, the EPA standard is somewhere between 20 and 40 parts per billion. Some States have a tighter standard, as low as 13 parts per billion. The problem is, with all of these lawsuits that have been filed, the trial lawyers have found out that you can detect MTBE down to one part per billion. Somebody shows up in your city council office and says, we have a lawsuit on MTBE contamination. Can we check your water supply? Of course they are going to say, sure, check the water supply. They come back and say, you got MTBE contamination, 2 parts per billion. Oh, my God. Let us join up. Well, unless you have got the most sensitive nose, you are not even going to be able to smell it, but it is there. It is way below the standard. Now, if the State wants to set a standard even lower than 13 parts per billion, I have got no problem with that. If the State wants to ban MTBE, which some States have, I have got no problem with that. But to sit here and say that you have all this contamination, well, I could take a thumbful of MTBE and take it out and throw it on the ground out here in the Capitol. And if it rains very quickly after that, the thumbful gets into the water system, the wastewater run-off here in Washington, D.C., and some of that goes to a reservoir and the city of Washington gets some of its drinking water from that reservoir, it might show up at one part per billion. That does not mean it is contaminated in the real sense, but it does mean there is some MTBE in there. So the fact that we have all these water systems that claim contamination, part of that is because the trial lawyers have been going on and recruiting people to join the lawsuit, and they go out and study their water supply and they may actually be able to find a little MTBE in it.”

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